

ADDITIONS

Answering the

OMISSIONS

OF OUR

Reverend  
AUTHOR.

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# ADDITIONS

Answering the

## OMISSIONS, &c.

**S**ince the Doctor thinks to flourish with some of his frivolous Omissions, like running his Sword through me after he had slain me in imagination ; To shew that I am not quite killed, I shall venture to try the length of his new whetted Animadverting Weapon, and give him a few home thrusts in exchange for his intended ones. Because I find him a gentle, and easie Foe, I shall advise him like a Friend,

*Frangere miser Calamos, vigilataque  
prælia dele.*

Your miserable Scribling pray give  
o're,  
With such Polemicks vex the World  
no more.

Against  
Jani, &c.  
p. 1.

*Ib.* p. 113.  
and 114.

Jani, &c.  
p. 26.

*Quid*, a  
new Para-  
graph.

Nor censure every thing as *Impertinent, Unintelligible, and Obscure*, that's above the level of your understanding. For proof of his great understanding he taxes three *Paragraphs* of mine with *Obscurity*, and that darkness which is in his own mind.

1. The first is, that *the City of London being charged with a Tallage, their Common-Council dispute whether it were Tallagium, or Auxilium, which is there meant of voluntary aid, not due upon the account of their Houses being of the Kings Demeasns, though indeed 'tis then shewn that they had several times before been talliated. Quid est quod in hac Causâ defensionis egeat?* I must needs say I take all this to be so plain that I know not which part I ought to add any light to. Is the difference between *Tallage* and a *Voluntary Aid* obscure? Or is it not well known that the Kings Demeasns only were talliated, and that the City having been talliated, 'twas in vain to urge that they paid only voluntary Aid?

But perhaps in the two next the *obscurity* may lye, and yet, by the Doctors Art of multiplying faults, they may  
make



make three obscure Paragraphs.

2. This explains that part of the Charter, *Simili modo fiat de Civitate London, that is as in all Cases besides those excepted, Escuage or Tallage should not be raised but by a Common-Council of the Kingdom, that is of all the persons concerned to pay; so for the City of London, unless the Aid was ordered in Common-Council, wherein they and all other Tenants in chief were assembled, none should be laid upon any Citizens but by the consent of their own Common-Council, and if the Ordinance were only in general Terms, that all the Kings Demesns should be talliated, the proportions payable there should be agreed by the Common-Council of the City.*

He adds such to Cases, to render it obscure. Jani, &c. p. 26.

No. So if a sum in gross were laid upon them.

This consists of two parts; First, That where there was not the consent of a Common-Council of all the Tenants in chief, the Citizens might of themselves give a Tallage, which is not in dispute between us, but is with admirable ingenuity turned into an assertion, that Cities and Burroughs were not taxed or assessed towards any payments, but by their own Common-Councils, (which is not to be inferred

Viz. To such payment as Tallage.

Against  
Jani, &c.  
p. 113.

from the privilege of one City, suppose it were so for *London*, nor can be gathered from my words, which yield that even *London* might be *Tax* or *Assessed* by the consent of the *Common-Council* of Tenents ) or that they, as part of the *Common-Council* of the *Land* taxed themselves, which is true ; but no man of sense can understand that to be the meaning of this part of the *Obscure Paragraph*, but that something farther was intended.

Indeed he  
would take  
in more  
places.

2. The second I need not explain since he understands, for all his affected ignorance, that after a *Tax* was imposed upon the *City* of *London* the *Inhabitants* ( or those who composed its *Council* ) met to proportion it, so as it might be paid with as much equality as could be.

Na. the  
King did  
perhaps re-  
quire a  
certain  
sum after  
a general  
Ordinance  
made by  
the Council  
of Tenents  
for a Ra-  
tionabile  
auxilium.  
Jani, &c.  
p. 26.

This he yields to my hand, that they always did if they would, it seems convinced by that *Récord*, which shews that when the *Council* of the *City* would not agree to the *Sum* demanded by the *King*, 'twas *de voluntate omnium Baronum nostrorum Civitatis ejusdem*, that the *King* talliated his *Tenents* *per se*, or *per Capita*, so much upon every head.

3. This

3. This clears the last *Paragraph* which I need not recite, it having no meaning differing from the Record, but if my Record give not sufficient light and strength he, I thank him, according to his usual *Curtessie* cites one clear enough.

Dr. p. 115.

*Et cum prædicti Cives nolissent intrare finem prædicti trium mille marcarum prædicti Thes. & alii voluerint assidere illud Tal. per Capita.*

So that till the Citizens refused the the Sum in gross, the King did not Talliate each man in particular.

But I am told that *this is nothing* to my purpose, 'tis strange that he who blames me in other places for not quoting more than is *for my purpose*, when nothing behind makes against me, should now tax me for not skipping over any part of that Clause which 'twas needful to take and explain entire.

To clear up his understanding if possible, though I thought to have left this Task, I will obviate an objection which such as our Answerer may make, that 'tis *obscure* how the Record of the Common-Council of *London's* concerning its self about the Charge laid upon

the City should explain that part of the Charter which sayes *Simili modo fiat de Civitate London*, but surely practice is a good Interpreter of a Law, and there is this further evidence that here is provision for the power of the *Common-Council* of the City, because that holding *in Capite*, and being mentioned distinct from all the other Tenents there named in general, it must be for something else, besides that for which 'tis joyned with the other Tenents.

But *Excedimus tenebris in crepusculum*, from this *obscurity* and *darkness* to be felt by the Doctors *groaping* hand, we come to broad day light.

Against  
Jani,  
p. 115. &  
317.

When in the 39th. H. 3. *Provisum fuit per Consilium Regis apud Merton*, that he should talliate his Demeasns, though this was after King John's Charter, which was intended to restrain the King from levying publick Taxes without publick consent; yet it seems to be plain by the Record that the King by the advice of his Privy Council taxed the City of London, even without the consent of the Common Council of his immediate Tenents, whom he

he makes the Common-Council for all manner of *Aid* and *Escuage*.

But it may be said, a Tallage was no publick Tax, though the Tax here spoke of, is made no more publick than the consent required to charge it; Which consent according to him, was from immediate Tenents only, so that *Tallage* might be a *publick Tax* as well as any other. And to be sure *Scutagium* concerning the Kings Tenents only, and the Cases in which the King reserv'd to himself power of taxing without publick consent in his sense, relating only to them; the *Tax* because of *tenure* must be provided for, as well as other, if any other were there meant by *Auxilium, vel Scutagium*.

Nay, he owns expressly, that according to the Law in King John's Charter, London and other Cities and Burghs were to be Assessed and Taxed by the Common-Council of the Kingdom. p. 117. &c  
118. And he makes a reason of that provision, to be the usage in the time of H. 2. for the King to *Talliate*, or Tax them without such a Council.

The Doctor has doubtless the most particular convincing way of reasoning  
of

of any man, he says that *Law in King John's Charter intended to restrain the King from levying of publick Taxes without publick consent*: And the reason of this Article in King John's Charter is Argument sufficient to prove it: for, mark the weighty reason, *H. the Third* after this was granted, and *Edw. 1st.* taxed their Demeasns through *England*; though not the whole Kingdom by Advice and Consent of their Privy-Councils only until the *Stat' de Tallagio non concedendo*, That is (as *Tallage* is confest to be, a *Publick Tax*) because some of King *John's* Successors Tax't their Demeasns without publick consent. Therefore 'twas provided in King *John's* time, by way of Prophecy, that no publick Tax, Aid, or Escuage should be raised without publick consent.

So that what was done after, was a moral cause, or occasion of what preceded.

'Twill be said, that the thing that the Doctor went to prove was, that the Common-Council mentioned in the Charter was the Great and Common-Council of the Kingdom, to all intents  
and

and purposes. Not that the King was restrained from levying a publick Tax without the consent of the *Great Council*. But surely when he goes to give the reason why the Charter must be taken in such a sense, we are to expect the proof of that, not of something else, quitting the thing to be proved.

If I can understand his dark meaning, he was proving that *Nullum Scutagium, &c.* intended to restrain the King from levying publick Taxes without publick Consent. That is ( to explain what he very obscurely drives at, ) the restraint was only from Taxing the whole Kingdom; not from Taxing his Tenants in *Chief*. And the reason of this Article, *viz.* as taken in this sense, is, that several times after this Charter was granted, *Hen. 3.* and *Edw. 1.* Taxed their Demeasns through *England*, though not the whole Kingdom, by Advice and Consent of their Privy-Councils only, until the Statute *De tallagio non concedendo* was made 34 *E. 1.* And both *Richard* the First and King *John* had Taxed the whole Kingdom without common Assent; before the grant of *Magna Charta*. And when  
he

*No. 10*  
*should*  
*have ad-*  
*ded only.*  
*Nullum*  
*Scutagi-*  
*um, &c.*

he has made good the Premises in this Argument for the meaning of the Article, which will be *ad græcas Calendas*, then, he may conclude that this Article intended to restrain the King, only from levying of publick Taxes without publick Consent, not to provide about *Escuage*, or *Tallage*, which none but his immediate Tenants were liable to. And from hence when prov'd, we might with some more colour and coherence raise the Consequence that the Common-Council mentioned in King John's Charter was the Great and Common-Council of the Kingdom to all intents and purposes. But how that should appear from the mention of *Aid*, and *Escuage* only, will be a Question.

'Tis by him observ'd of *Richard* the First, *Accepit de unaquâque carucatâ terræ totius Angliæ sex solidos.*

*Bracton*  
*Lib. 1. cap.*  
*16.*

But what proof is there from the word *accepit*, or the collecting of a Tax, *ex præcepto Regis*, that he took it without publick consent? I am sure *Bracton*, as good an Author as the Historian whom he Vouches, tells us *Carvage*, and such this was, could never be raised but *Consensu communi totius regni.*

But



But if the King in his Privy-Council might Tax the Kingdom its self, till the making King *John's* Charter, and was restrain'd then, I wonder our Reverend Author has made the Constitution of the House of Lords, that is according to him, the whole great Council, to have been no earlier than the 49<sup>th</sup>. of *H.* 3.

And unless such a Council as is mentioned in that Charter were Constituted before, how comes it to pass that the *Clerus* and *Populus*, which were of the Kings Council for making Laws, and giving Taxes, were not till 17. *Jo.* confin'd to such of them as were of the Privy-Council, as well as *Communitas populi*, after *Magnates* was meant of such people as were *Magnates*, and *Milites*, & *liberè tenentes*, besides Barons, were the Tenents in *Capite*, who by their Acts oblig'd all that held of them by Knights Service: that is all the *Milites*, but not the *liberè tenentes*.

We are taught that in the 6 of King *John* Tenents in *Capite* only, provided that every nine Knights should find a tenth for the defence of the Kingdom, and that they who were to find them

May sometimes he  
Argues  
that it  
was not  
before,  
p. 56.

p. 110.

112.

113.

Against  
*Jani*, &c.  
p. 125,  
126, 127.

were

*Fant, &c.*  
p. 225.

were all Tenents in Military Service. Though the Record shews, that besides the *Miles vel Serviens*, *Alius terram tenens* was Charged with this. And he vouchsafes not to take notice of my Argument, that every Knight being bound by his tenure to find a man; if this had not extended to all that had to the value of a Knights Fee, though not held by Knights Service, it would have been an abatement of the Services due, and a weakning of the Kingdom.

Besides, admit that Tenents in *Capite* only laid this Charge, and only Tenents by Knights Service were bound by it, here is such a *Commune Concilium* of Tenents, as I say King *John's* Charter Exhibits, and no Charge laid by them upon others. Whereas he should have prov'd that they did oblige others without their consent.

But suppose Tenents only were Charged, why might not the Charge have been laid by *Omnes fideles* in my sense, as we find *Omnes de Regno*, taxing Knights Fees only?

p. 119.

The Doctor in his Margin gives us an admirable nota, that *Liberi* were  
*Tenents*

*Tenants in Military Service, or Gentlemen, Rustici Socagers, possessors or Freeholders in Socages only, which is as much as to say that Freeholders were not Freemen, unless they held in Military Service, and yet a Tenement, or Possession neither added to, or detracted from the person of any man, if free or bond before.* Glos. p. 10.

But surely Mr. Professor has some colourable proof for his remark here: For that let others judge.

*Hoveden* acquaints us with the manner of collecting a Carvage in the ninth of Richard the First, which was, that in every County the King appointed one Clergyman, and one Knight, who with the Sheriff of the County to which they were sent, and lawful Knights chose, and sworn to execute this business faithfully, *Fecerunt venire coram se senescalos Baranum istius comitatûs, & de qualibet villâ Dominum vel Ballivum villæ & prepositum cum quatuor legalibus hominibus villæ, sive liberis, sive rusticis, who were to swear how many Plough Lands there were in every Town.* Gals. Milit.

Against  
Mr. Petyt,  
p. 36.

So Against  
Jani. p.  
36.

p. 78.

If here *liberi*, and *rustici* are not meant for two denominations of the same sort of men, that is ordinary Freeholders, I will leave him to fight it out with *Hoveden*, since he himself is directly contrary to the *old Munk*; *Hoveden* shews us that these Socagers were *legales homines*, such as chose *Juries*, and serv'd on *Juries* themselves, &c. but our *new light* is positive that *Tenants in Military Service* were the only *Free-men*, and the only *legal men*. Thus I have done right to his Omissions, passing by nothing which has not received justice before, and shall add some confirmations of what I have taken leave to assert in other places.

I had affirmed for one reason why the Doctor could have *small* assistance from *Domesday Book*, that the Titles whereby men enjoy'd their Estates are seldom mentioned there. And if I find by Record a whole County in the Doctors sense, that is all the Lands of the County enjoy'd by descent from before the imaginary Conquest; What will he say in justification of his *whymfies* upon the Conquest, and the authority he would fetch for it from *Domesday Book*?

He

He may please to consider, and give a Categorical Answer to this memorable Record.

**I**N placito inter Regem & priorem Ecclesiæ de Coventre de annua pensione uni Clericorum Regis, ratione nove creationis ejusdem prioris quousque, &c. prior venit & defendit vim & injuriam & quicquid est in contemptu domini Regis, &c. non cognovit Ecclesiam suam beatæ Mariæ de Coventre fore Ecclesiam Cathedralē nec ipsum priorem tenere aliquid de domino Rege per Baroniam prout pro domino Rege in narratione sua proponitur. Et dicit quod tenet prioratum prædictum ex fundatione cujusdam Leofrici quondam Comit̃s Cestriæ qui prioratum prædictum fundavit tempore sancti Edwardi dudum Regis Angliæ progenitoris domini Regis nunc per Cantam suam in hæc verba.

Placita coram Rege  
Hill. Anno  
14 R. 2.  
Rot. 50.  
warw.

Anno dominice incarnationis 1043.  
Ego Leofricus Comes Cestriæ Consilio & assensu Regis qui literas suas infrascriptas sub sigillo misit & testimonio aliorum religiosorum virorum tam laicorum quam Clericorum Ecclesiam Coventre dedicari feci, in honore dei & Ecclesiæ sanctæ

B

Mariæ

*Mariæ genitricis ejus, & sancti Petri Apostoli & sancte Osburge Virginis, & omnium sanctorum ; Has igitur viginti quatuor villas eidem Ecclesiæ attribui, ad servitium dei & ad victum & vestitum Abbatis & Monachorum in eodem loco deo servientium, videlicet Honiton Newenham Chaldeleshunt Ichenton Ulston Souham Grenesburgh Burthenburgh Mersten juxta Avonam Hardewick Wasperton Creastorton Sotham Rugton dimidium Sowe Merston in Gloucestriæ provincia Salewarpe in Wigorniensis Eton juxta amnem qui dicitur dee in Cestriæ provincia Keldesbye & Windwyk in Hamptoniensis provincia Borbach Barewell Scrapstoste Pakinton & Potteres Merston in Leycestrensis provincia. Has autem terras dedi huic Monasterio cum Soca Saca cum telonio & theme cum libertatibus & omnibus consuetudinibus ubique Sicut a Rege Edwardo melius unquam tenui. Cum hiis omnibus Rex Edwardus & ego libertates huic Monasterio dedimus, ita ut Abbas ejusdem loci Soli Regi Angliæ sit Subjectus.*

*Ibidem recitatur Charta ejusdem Regis Edwardi quas donationes & concessiones diversi alii Reges confirmaverunt & dicit*

cit quod postea per processum temporis  
 nomen Abbatiae praedictae divertebatur  
 in nomen prioratus, eo quod Leofwinus  
 ad tunc ibidem creatus fuit in Episcopum  
 Cestriae & ordinavit per assensum Mona-  
 chorum ibidem quod Abbatia praedicta  
 ex tunc foret prioratus & quod Superio-  
 res ejusdem Ecclesiae forent priores suc-  
 cessive in perpetuum, & dicit quod de  
 ipso Leofrico, quia obiit sine herede de  
 corpore suo descendente advocatio Ec-  
 clesie predictae tempore Willielm' Con-  
 quest' Angliae cuidam Hugoni Comiti  
 Cestriae ut Consanguineo & heredi ipsius  
 Leofrici, viz. filio Erminelde sororis  
 ejusdem Leofrici & de ipso Hugone cui-  
 dam Ricardo ut filio & heredi & de ipso  
 Ricardo cuidam Ranulpho ut Consangu-  
 ineo & heredi, viz. filio Matildis sororis  
 praedicti Hugonis & de ipso Ranulpho  
 cuidam Ranulpho ut filio & heredi & de  
 ipso Ranulpho filio Ranulphi quia obiit  
 sine herede de corpore suo descendente  
 advocatio praedicta simul cum Comitatu  
 Cestre & Huntingdon & aliis diversis  
 Castris Maneriis terris & tenementis  
 cum pertinentis in Anglia & Wallia qui-  
 busdam Matildae Mabilliae Ceciliae &  
 Margeriae ut sororibus & heredibus pre-  
 dicti

Na. this is  
 the Hugh  
 to whom  
 he ima-  
 gines that  
 William,  
 gave all  
 the Lands  
 of the  
 County of  
 Chester.

*dicti Ranulphi inter quas proprietia facta fuit de predictis Comitatibus advocatibus & Castris Maneriis terris & tenementis cum pertinentiis supradictis. Et predicta advocatio Simul cum toto predicto Comitatu Cestriae cum pertinentiis allocata fuit predictae Matilde pro parte sua in allocationem diversorum aliorum Castrorum Maneriorum terrarum & tenementorum cum pertinentiis praedictis Mabilliae Ceciliae & Margeriae seperatim allocatorum & de ipsa Matilda descendebant predicta advocatio simul cum praedicto Comitatu Cestriae cum pertinentiis post proprietiam predictam cuidam Johanni Scot ut filio & heredi praedictae Matildae Qui quidem Johannes Scot advocationem praedictam simul cum praedicto Comitatu Cestriae cum pertinentiis dedit Henrico quondam Regi Angliae filio Regis Johannis & heredibus suis in perpetuum, &c. praedictus prior sine die.*

This was a Judgment upon solemn Debate and Tryal, and it cannot be believed but the Judges, and Kings Council so many hundred years ago, knew as much of the right of the Conquest



quest as our Doctor can discover. 'Twill be said notwithstanding this Record, that *Hugh* had the Confirmation of his *Kinsman* the Conqueror.

Admit he had, he being his Kinsman would either thereby wheedle others in to the like acknowledgment of *Williams* power ; Or else having the Government of the County, would do this in complement to the supream Governour.

But that such Confirmation as to the Lands he had there, and all appendants or appurtenances to them was wholly needless, appears in that the Title is laid only in descent, nor does it in the least appear that *William* either granted or confirm'd more than the *Comitatus*, Government, or Jurisdiction of it, or that more than that was held by the Sword, which the Doctor makes *Tenure in Capite*. Let him shew how, by what manner of tenure his Land was held.

Not being aware that so great an Author as the Doctor would have condemn'd for *precarious*, all that I think I have prov'd from the Records and Histories which I cite for the foundation

Against  
*Jani*, &c.  
p. 82.

*Jani, &c.*  
p. 264.

*ib. p. 264.*

Against  
*Jani, p. 4.*

Against  
*Jani, &c.*  
p. 89.

of my former Essay, viz. that till the 48. and 49th. H. 3. all Proprietors of Land came to the *Great Council* without exclusion. I had asserted that the *probi homines*, or *bonæ conversationis*, came to the *Great Councils* (which in common Intendment is meant of coming as *Members*) in their own persons, and when they agreed to it, which was no abridgment of their personal right, they came by Representation, and Election, and every one was there himself virtually by his Deputy, but they often met in vast bodies, and in capacious places, both in the Saxon times, and after William the First obtained the Imperial Crown.

(1.) If you'll believe the *Chair* all this is precariously said, without Foundation or Authority; however 'tis granted that I seem to back it with an instance, where I say, *The whole body of Proprietors were assembled at Runemede between Stanes and Windsor, at the passing of King John's Charter.*

The Doctor refers us to p. 106. and 107. of his pretended Answer to Mr. Petyt, to see what this Assembly was, and of whom it consisted; where he proves

proves my Assertion, being all that he there shews is, that there was not time for *Writs to issue* to chuse any *Representatives* of the Commons, but not a word offer'd against their being there in their own Persons, having been got together expecting the Kings Answer to their Demands, who appointed a meeting at *Runemede*. The Record saith there were *Comites, & Barones, & liberi homines totius regni*, or according to that Expounder of more fallible Record *Ma. Paris*, there were the *Magnates*, which must there be meant of the *Nobilitas Major*, (unless you take them for the *Kings friends* only, as the great men of the Kingdom elsewhere) these *Magnates* had drawn to their side, and to that treaty, *Universam fere totius Regni Nobilitatem*, and this Nobility was so numerous, that they made a vast Army, *exercitum inestimabilem confecerunt*, and the Records not only shew that such as were but *liberi homines* were there, and parties to the agreement being *inter Regem, Comites, & Barones & liberos homines*, but the body of the Charter shews that Tenents by other free tenures, besides *Knights*

*Rot. Pat.*

*17. Joh.*

*pars unica*

*m. 13. n. 3.*

*ib. m. 23.*

*verso.*

Against

*Mr. Petyt,*

*p. 183.*

*p. 127. in*

*Marg.*

*Ma. Paris*

*fo. 244.*

*service* were interested in it.

Besides this, the frequent meetings in so wide a place as *Runevede* call'd *Pratum Concilii*, as I observed in the same page, is a strong Argument that vast bodies compos'd the *great Councils* in those days, and why Tenents in *free Socage* were not *Members*, as well as such as held of Subjects by *Knights service* I see no reason, but wait for the Doctors; In the mean while I shall present him with some other Authorities which shew that my Assertion was not precarious.

(2.) If in the 38th. of *H. 3.* the Commons, or *probi homines* were *Members* of the *Great Council* by Representatives of their own choice, and degree, there being besides all the Tenents in *Capite* two chose for every County, *Vice omnium & Singulorum*, and yet such came in their own persons both before, and after the making of King *John's* Charter, since which till the 48th. or 49th. of *H. 3.* no alteration in the way, or right of coming is supposed; then it follows that Representations were brought in when the *Commons* (who might have come in

*Jani, &c.*  
p. 244. Vide amongst  
other Authorities.

*Jani, p. 51.*  
57, 58, 59,  
60, 61. 66.  
214. 248.

in their own persons) *agree to it*, and there being of the *Councils* before the *Norman* times and then, *Barones & populus*, 'tis not to be doubted but that they came in their Persons if they would, *both in the Saxon, and Norman times*, especially since *William the First* did but confirm the Law of the Confessor concerning the power of the *Great Council*, in words that shew'd that all the Members were in those ages stiled *Peers*, such as might come in person, and that inferior Proprietors were *Members*, the Law of the great *Folcmote* then received proves beyond all dispute.

*Rex debet omnia rite facere in regno & per judicium Procerum Regni Leges Par. Ed.*

3. If besides *Barones*, and *Milites*, we find *Libere tenentes*, or *Fideles* in the account of *Great Councils* before 49 *H. 3.* we are to suppose, even without Consideration of the Capacious places of their Assembly, and the multitudes there, that such *Proprietors* of Land as would, came personally, till a Law or common practice to the contrary be shewn, it being according to their natural right, and the natural import of the words ; besides the Doctor does not allow of Representations, except the

*Jani, &c. p. 241. Against Mr. Petys, p. 112. The free Tenents in Scotland, and the Possessors in Poland us'd to be Members of their great Councils without Representation.*

*Jani, &c.*  
p. 248. &  
p. 66.

the Tenents in *Capite* who came without Election, were Representatives of the rest.

*Jani, &c.*  
*through-*  
*out.*

4. If King *John's* Charter does not exhibit the full form of our *English Great*, and most *general Councils* in those days, but, by continuing the rights of every particular place, leaves room for *Proprietors* of Land to have been *Members*, as well as Tenents in *Capite*, then the *libere Tenentes*, which many Records before the supposed change in the time of *H. 3.* mention as *Members* of the Great Councils, were not Tenents in *Capite*.

And as Tenents in *Capite* came in their own persons for matters concerning their Tenures; So, unless the contrary can be shewn, we are to believe that the *libere tenentes*, not holding in *Capite*, came in like manner, especially if we consider how mean were some of the *Majores Barones*, to whom special Writs were to be directed, as he that held part of the Barony of *Mulgrave*, *per servitium millesimæ ducentesimæ partis Baronie*. Nay I find *Norman Darcy*, who indeed held several parcels of the Manor of *Darcy*, which seem to be by several

*Communia*  
*de Term.*  
*Mich. An.*  
39 E. 3.  
*Rot.* 36.  
*penes Rem.*  
*R. in scac-*  
*ario.*

veral purchases, amongst other shares holding *Centessimam partem Centessimæ Sexagesimæ partis Baronie*. The hundredth part of the Hundred, and sixtieth part of the Barony, and yet that he who had only so much was *Baro Major* appears, in that the Common Law exempted him from being of a Common Jury as holding part of a Barony.

*Penes Rem.  
Regis in  
scaccario  
de Term.  
Pasche  
29 E. 3.  
Lincoln  
de Re.  
Brook tit.  
exemption.*

Besides the Doctor yields that more than such as are expressly mention'd in the contested Clause, Tenents in *Military service* of King John's Charter, viz. of Tenents in *Capite* were *Members* of the Great Councils, (which he does not always confine to the great Tenents) and some of these were as inconsiderable, and as unfit for Counsellors as the generality of the *libere Tenentes*; for though he in his sixteen years search, could find no less a *part* of a *Knights Fee*, than a *twentieth*, yet in the last recited Record he may meet with the *sixtieth* part of one *Knights Fee* in the Mannor of *Norton*.

*Against  
Mr. Petyt,  
p. 41.*

5. Being all that were *Members* of the *Great Councils* in those times of which our dispute is, were *Nobles*, in which the Doctor and I agree, and the *Nobles*

*Jani, &c.  
p. 32. 35.  
36. 40. 57.  
62, 63, 64.  
66. 185.  
219.*

*Nobles* came in their own Persons, the libere Tenentes, *part of the Nobility* were personally present.

Indeed Corporations holding *in Capite* might well come by Representation, being they were but as one *Noble*, and one Tenent, and would have been an unweildy body to move to Council united as their interest was.

( 6. ) King *John's* Resignation was void, because 'twas without the consent of the Commons, *Sanz leur assent*, and to say that this is *without the assent of a general Council*, Colloquium, or Parliament, *in those times when it was done*; unless he yield the same sort or degree of men to have been *Members* of the Great Councils formerly as then, does not take in the full meaning, but is to say nothing, being the Commons manifestly assert their right, as when they declared that they had *ever been* *Assenters as Petitioners*. And what force does it bring to the Doctors Assertion, that the Commons answer *in the same form of Speech conceiv'd by the Bishops*? Which he thinks worthy of great Letters, is that an Argument that the  
Commons

Against  
Mr. Petys,  
p. 133.

ib. p. 140.



*Commons* did not think that they ought to have been parties ? He himself grants that King *John* resigned before them that came upon a *Military Summons*, Against Jani, &c. p. 22, 23, 24. that is (as all who ought to come were concluded by them that came) before all his Barons ; wherefore nothing wanted to the Confirmation, but the Consent of the *Commons*.

And if the *Commons* were then an essential part of the Great Council they might come in Person, unless the change in 49 *H. 3.* can be shewn to have been any otherwise than in the bringing in a Representation of them. Vid. the 12th. head.

(7.) By the Charter of *H. 1.* for the King's *dominica necessaria*, or *de arduis Regni*, Jani, &c. p. 34. all the Counties and Hundreds, that is the *Freeholders*, the Suitors at those Courts were to be summon'd to the *Great Council*, as it had been in the time of the Confessor, when there repaired to the *Great Folcmote*, or *General Council* held once a year, all the Peers, Knights, and Freemen, at least *Freeholders* of the Kingdom.

(8.) For demonstration that *libere tenentes* came to the Great Councils in their own Persons, and as Members ;  
King

King *John* before the passing of his Charter, writes to the *Milites, & Fideles*, (the last of which takes in all the *libere tenentes*) and tells them that if it might have been done he would have sent Letters to everyone of them; wherefore these Members whose right is here acknowledged were single, individual persons; for they could not have been summoned to come by Representation in the case of such particular Writs, or Letters, unless the Representation were settled before the Summons, which is not to be supposed. These Arguments all but the last, which the Doctor has supplied me with, arise out of my former Treatise, and I take it that this which the Doctor has occasioned, will yield a few more without pressing.

V. *Domesday*, &c.  
Besides  
(according to the terms first agreed on) he received the Confessors Laws about this Folcmote. Confutatio-  
on, p. 33.

(9.) Since *William* the First was no Conqueror, it follows that the *Great Folcmote*, or *General Council* in the *Saxon* times, where to be sure all Proprietors of Land were to be *Members*, could not have been turn'd into an Assembly of the Kings Tenents upon the old legal Title, (and without a Conquest there was no other.)

And

And as there must have been a vast number of the Proprietors whom the Kings immediate Tenents could not oblige; so they must have been *Members* of those *Councils* which laid any general Charge, and that with the same priviledges the Tenents *in Capite*, who came in Person, had.

( 10. ) Though demonstration it self will not satisfie unreasonable men, yet not to mention more I shall urge the Authority of the Legier Book of *Ely* Jani, p. 41. before cited, ( the great Antiquity of the hand writing of which is beyond all exception ) to persuade the Doctor that my Notion is far from being *precarious*; Since that *M. S.* shews that King *Stephen* consulted about the State of the Kingdom, not only with the Bishops, Abbots, Monks, and inferior Clergy, but with the *Plebs*, and they in an *infinite number*, *Concilio adunato Cleri & populi, Episcoporum, atque Abbatum, Monachorum, & Clericorum, Plebisque infinitæ multitudinis, &c. de statu Regni cum illis tractavit.*

This single instance is sufficient to Against prove that the *Primates, Primores, Pro-* Jani, p. 62. *ceres, Magnates, and Nobiles, were not*  
the

*the Constituent parts of Great Councils in the Reigns of W. the 1st. H. 1st. King Stephen, H. 2. R. 1st. according to his restrictive and limited understanding and exposition of these words and phrases, but that the CLERUS and POPULUS (the general words which often comprehend all the Members) signify as well as Great Men, the Common Freeholders, as at this day; nor need I examine his Book any farther: but I hope the Doctor, a man of that known integrity, as his excellent Book expresses him to be, will now make good his promise to be of my opinion, when I should evince that Common Freeholders had this great priviledge.*

p. 62.

( 11. ) The Lords right of answering for their Tenents being founded in the imaginary *feudal right*, which is made to extend only to Tenents by *Knights Service*, the *Socagers*, being free from that Law, could not be charged without their own consent, and that given by word of their own mouths, if they pleased.

*Jani, &c.*

p. 248.

( 12. ) The Authority cited by Mr. *Cambden*, and approved of by our Author as well as by me, shews that the only

only change in the *Great Council* was in leaving out of the special Summons what *Earls and Barons* the King pleased but the right of all other Barons, as *Singular Persons*, to share in the Legislature was preserv'd by the *alia illa brevia*, by which the Representatives for the Counties came, and being all the *Members* of the *Great Councils*, but Citizens and Burgessees, or all such Barons as aforesaid, came before the change in their own Persons, and no new kind of *Members* were then Created, and yet there was a substantial alteration, a new Government fram'd and set up, this alteration must consist in the *Commons*, or *Barones Minores*, their being put to Representatives when before they came Personally.

Against  
Mr. Petyt,  
p. 226.  
ib. p. 228.  
Confutati-  
on, p.

Against  
Mr. Petyt,  
p. 210.

( 13. ) I could bring many Arguments from the Doctor, as, besides others, that the *Universitas Militiæ*, or *qui militare servitium debebant*, that is as Record explains, *Ma. Paris*, the *Fideles* besides *Milites* were *Members* of *Parliament*, but I may spare farther proof till he gives me fresh occasion.

Against  
Mr. Petyt,  
p. 183. &  
192.

C

( 14. ) And

Against  
Jani, &c.

P. 34.

Yet this  
tenure

came in

with Will.

1st.

Against

Mr. Petyt,

P. 31.

(14.) And possibly then amongst his other *marvellous discoveries*, I may have time to animadvert a little more largely upon his fancy, that *the Suitors in the County Court were all Tenents in Military Service, except Barons, both in the Saxon and Norman times*; by the way you must understand that the Barons were not Tenents in *Military Service*, though they held *in Capite* by *Knights Service*. And that *William the first* made no alteration of the Government; for Tenents by *Military Service*, were the only *legal men*, and the only *Members* of the *Great Council* before.

Glos. p. 26.

But as Tenents *in Capite*, and their Tenents in *Military Service* were of the *Great Councils* in Person, all the *Suitors at the County Court*, who were according to the Charter of *H. 1. qui liberas habent terras*, in each County respectively, were there in Person as *Members*.

Against  
Mr. Petyt,

P. 43.

Though not relating to the foundation of my Essay, according to him, who makes the Question about the Conquest

quest not directly to reach the Controversy between us, I may make a little sport with his Arguing that *William* 1<sup>st</sup>. gave whole Counties to his Followers, under the word *Comitatus*, that is as he renders it, all the Lands in the Counties; and yet that besides whole Counties, he gave a great proportion of Lands in them.

Against

Jan. p. 15.

Against

Mr. Petyt,

p. 29.

Glos. p. 3.

But since he taxes what I lay for the foundation of my Essay for *precarious*, let's see a little whether he does not render his own so, where it opposes mine. His whole Book in that respect resolves its self into these three Heads;

1. That King *John's* Charter in affirmation of the Law imposed by *William*, or in force before, declares that the Tenants *in Capite* were the only Members of the General Council of the Kingdom.

2. That from thence to the 49 *H.* 3. the practice or fact was for Tenants only to compose the Great or General Council.

C 2

3. That

3. That none but Tenents *in Capite* were Nobles.

Against  
Jani, p. 46.  
& 47.

( 1. ) If he himself yields that till King John's Charter there was no such Council as one made up only of Tenents *in Capite*, he thereby renders all under this head *precarious*, but this he does in two places at least. One where he urges that if the *Curia Regis Ordinaria*, which I say was the Court of the Kings Tenents, and Officers exclusive of others, went off by reason of the Clause in King John's Charter, it certainly went off before it began, that is, such a Court began not before; and agreeable to this, he says, that after the granting of this Charter by King John there were many General, and Great Councils, or Colloquiums summon'd by Edict according to the form there prescribed: that is, as he will have it, after that the Tenents *in Capite* only were summon'd to the Great Council, but not before, for then began this form.

ib. p. 22.  
& 23.

In another place ( though he charges upon me what are his own words ) he says King John resigned his Crown the 15.  
of



of May in the 14th. of his Reign, and he granted the great Charter of the Liberties three years after on the 15. of June in the 17. of his Reign, and therefore could not resign it in such a Council as was Constituted three years after his Resignation. And 'tis a question whether he asserts not this in a third place, where he affirms that before this Charter the Kingdom had been Taxt by our ancient Kings, and their Privy-Council only.

Thus p. 48. &c 49. he charges Mr. Petye and me for averring that even Servants who are not in a legal sense people of the Kingdom were Members of the Great Council.

( 2. ) But in truth he not only yields that the Tenents in Chief were first made the General Council by King John's Charter ; but that after that, more than such were Members, not only the Tenents in Military Service, of Tenents in Chief, but other ordinary Freeholders. So that he submits himself to be goard by both the horns of that Dilemma inforc't in my former Treatise, viz. that King John's Charter was either declarative of the Law as 'twas before, or inductive of a new Law. And yields the precariousness of his own vagaries.

My words are in such a Council as this here. Jani, p. 15. which is as much as to say that there was such a Council as this before. p. 118. Against Jani, p. 66. Jani, p. 236.

( 3. ) But does he not own that the

Notion that Tenents *in Capite* only were *Noble*, is *precarious*? Since he yields that no kind of tenure does nobilitate, or so much as make a man free who was not so before according to his *Blood or Extraction*.

*Glos. p. 10.*

Though, according to this, one that held of the King in Chief might have been a Subjects Villain, yet none that held a certain Estate of *Freehold* could be a Villain, because 'tis contrary to the nature of a *Freehold*, that it should be so no longer than another pleas'd, that is only an Estate at will.

Against

Mr. Petyt,  
*p. 1.*

He will have it that Mr. Petyt is guilty of some horrible *Design*, from the effects of which it seems this mighty Champion is to *rescue* the Government.

Against

*Jani. p. 71.*

And for me I am a Seducer, one who would *seducer unwary Readers*, a malicious insinuation, as if I would wheedle to my side a party against Truth and the Government; but whether he who would set aside the evidences for the Rights of the *Lords*, and *Commons*, or they who produce them fair, and would  
render

render them unquestioned, is guilty of the worst *design*, the World will judge; and I doubt not, but he has at home a thousand Witnesses, who, if he will hear their unbyast Testimonies, will inform him whose are the *groundless* and *designing* interpretations.

*Conscientia mille testes.*  
Against  
Mr. Petyt,  
p. 1.

But I must confess they are so weak *ib.* that *these sacred things* need very little help *to rescue* them; especially since their Enemies are so far from agreeing amongst themselves, that 'tis more easie to conquer than to reconcile them.

As on Mr. Petyts, and my side, the *design* can be no other, than to shew how deeply rooted the Parliamentary Rights are; So the Doctors in opposition to ours, must be to shew the contrary, ( a *design* worthy of a Member of Parliament ) and 'tis a Question whether he yields these Rights to be more than *precarious*.

For according to him the Tenents *in Capite* were the only *Members* of the Great Council before 49 *H. 3.* and if others were after, 'twas by Usurping

*ib. p. 210.**ib. 42.**How were  
Cities and  
Burroughs  
holding in  
Capite Re-  
presented  
according  
to this?**And how  
came they  
ever to be  
Represent-  
ed?**ib. p. 79.**ib. p. 42.**ib. p. 227.**&c. 228.*

upon the Rights of Tenents in Capite, who, and not others, when the new Government was set up, began to be Represented by two Knights for every County, out of their own number, and they at first, that is then, Elected their own Representatives; and yet these Tenents in Capite might be set aside if the King and his Council pleased, nor was any power given to others to chuse till 10 H. 6. c. 2. which gave no new power, and the Lords depend upon the Kings pleasure. Therefore what the design is, and at whose door the crime of it lies. the thing it self speaks, tho I should be silent.

Against  
Mr. Petyt,  
p. 249.

But for fear he should seduce unwary Readers, I must observe his Artifice in imposing upon them the belief that as it has ever since 49 H. 3. been at the Kings pleasure that any Lords came to the Great Council; so the King could of right name to the Sheriff what Representatives for the Counties, Cities and Burroughs he pleas'd, as he observes in the Margent upon a Record 31 E. 3. but he is not so Candid to observe, that though indeed at that time there was  
such

such a nomination, yet that was not to any Parliament, or to make any new Law, or lay any kind of Charge upon the Nation, or particular men; but was a Summons of a Council to advise how what was granted by *full Parliament*, legally Summon'd, might be best answered *juxta intentionem concessionis prædictæ*, and in such Cases the Judges only, who are but Assistants in *Parliament*, might well be consulted; but *pro magnis, & urgentibus negotiis*, (as when King Charles the First called the *Magnum Concilium*, or Great Council of Peers to York, upon the Scotch Rebellion) the King call'd more to Advise with, and the Counsellors might well be of his own Choice. An. 1649

'Twill be urg'd that when the King appointed but one for every County, they were impowr'd to consent to what *de Communi Consilio contigerit ordinari*, and that such a Council made Laws, as the Statute of the Staple made the 21 of E. 3. to which the answer is very obvious, that they made only *Ordinances*, not *Laws*, and that these were *Magna Consilia*, taken in a sense totally different

28 E. 3.  
c. 13.

Rot. Par.  
3 H. 6. n.  
12.

rent from the *Generalia Concilia*, or *Parliaments*, and all this appears above the power and subtilty of our learned Doctors Evasions, in that the Record cited by himself in the 26 E. 3. calls the Assembly they are Summon'd to, *Concilium* only, and an Act of Parliament in the twenty eight of that King calls what was done in the twenty seven *Ordinances*, and that meeting a *Great Council*, *Magnum Concilium*; but such a Council it was, and its Resolutions such meer *Ordinances* (the distinction of which from Acts is well known) that that very next Parliament finds it needful to confirm, and give them the force of a Law. Agreeably to this the Earl Marshal in that grand Case in the 3 H. 6. pleads, that though a determination *hadde be made against the said Earl Marshall in great Council, though he hadde be of full age, that might not disherit him without Authority of Parliament*, these are uncontrollable evidences, and proofs against him, let him to save the great Credit of his Learning answer them if he can.

But who is the *new Government-Maker*,

ker, and new Parliament-Maker, perhaps one might know from himself when he has considered a little better, and then he may think the *Government*, as 'tis now establisht, nighly concern'd in his Errors.

Perhaps 'twill be said I injure this good man in imputing to him a *design* in relation to the present Government; Since he owns that the *most excellent* great Council, (and goes to prove it Against Mr. Petyar *evidently from Records*) received *its* P. 229. *perfection from the Kings Authority, and time.* But 'tis obvious that *its Perfection*, must be meant of such *its Perfection*, as his Book allows, and he would make *evident*, but what is that? That Lords should, to the time of his *excellent discoveries*, be Summon'd to Parliament, or past by, at the Kings ib. p. 227] pleasure, and that if the King pleas'd, & 228. he might Summon *one Knight for a County, one Citizen for a City, one Bur-* ib. p. 249] *gesses for a Burgh, and those nam'd to the Sheriff.*

And this *design* will be very *evident* if we observe his *aery ambuscade*, to  
return

return his own phrase, and meer juggle in joyning *the Kings Authority and time* together ; we think we have something, but by an Hocus Pocus Trick 'tis gone ; for admit that *its Perfection* were such as we say it has at this day, *viz.* for Lords to come of Right in their own Persons, and that the Commons should send Representatives of their free Choice. Yet let us see what settlement he gives this *Great Council*, for which purpose we must divide the two Authorities, which sometimes may differ.

And ( 1. ) Suppose that though time would preserve that power which the *Great Council* exercises, a King would hereafter take it all to himself, and make Laws by a Council of his own chusing, or without any. If the Doctor allows this power, doubtless the next Parliament will thank him.

( 2. ) Suppose that without, or against the Kings Authority, *time* only would establish this Great Council, can this be done ? He that affirms it surely will



will be no great friend to Prerogative,  
nor understands he that Maxim,

*Nullum tempus occurrit Regi.*

And one of these must be clos'd with.

'Twill be objected that I am as injurious to Prerogative in arguing that some Lords may have a Right of Prescription to come to the Upper-House.

But I think no sober man will deny that there is a right either from Writs alone, or from Writs as prescribed to, and 'tis strange that it should not be against Prerogative to urge a right from one Royal Concession, and yet it should be to urge it from many; but farther, if they who had no right to come in Person, or be Represented in Parliament, should by colour of Prescription put themselves upon the King for Counsellors, this were derogatory to the Prerogative. But if there be a natural right for *Proprietors* of Land (with whom some say is the ballance of power within this Nation) to be interested in the Legislature, which I <sup>need</sup> not affirm.

Or

*Rex debet  
omnia rite  
facere in  
Regno &  
per judi-  
cium pro-  
cerum Re-  
gni.*

Or if there be such a positive right, not only from the Laws for frequent Parliaments, which suppose such to be *Members* as had been, but more particularly from the Law received in the 4<sup>th</sup>. of *William* the First, and by positive Law or Custom the King us'd to send special Writs for some, general for others; the Prescribing to special Writs, which is not of Substance as to the Legislative Interest, is no diminution of Prerogative; because no more in effect is out of the King than was before, which is, that this man should one way or other have a share in the Legislature.

If this Solution of mine will not pass I cannot help it, I am sure the Law for a right grounded upon one or more Special Writs of Summons, stands fast, though the reason of it should be above my reach.

*Above all  
vid. Title  
next  
Against  
Mr. Petyt,  
& p. 21.*

Having run through a Book so ill-natur'd to the Government, and so impotent in its settled anger, as that which some may think to have no other design, than that of exposing Mr. Petyt and me, the one for *Artifice*, *unhandsom dealing with*, and false application of Records,

*Records, &c.* the other amongst other things, for *Ignorance, Confidence, and Cheating his Readers* ; I may hope notwithstanding the disparity of years, and the dignity of his place, to be very excusable in using our Answerer with no more respect.

When a man renders himself cheap by his folly, and yet meets with many so weak that they are discipled by him, to notions of dangerous and pernicious consequence to the State.

—*Ridentem dicere verum,*  
*Quis vetat?*—

In summing up *the Product of his many years labours*, which my Preface charges him with, perhaps it may be thought that I omitted one considerable Head ; however I leave to others if they think fit to add for a seventh.

*That both Lords, and Commons may be depriv'd of all Shares, or Votes in making of Laws for the Government of the Kingdom, when ever any future King shall please to resume the Regality.*

Some

Some perhaps may add an eighth;  
*That the Parliaments are nothing but  
 Magna Concilia, such as are called only  
 to Advise upon what shall be given in  
 direction, but no consent of theirs re-  
 quired to make the Kings determination  
 a binding Law.*

And *Vice Versa*, every Great Council;  
 1640. *such as that call'd to York, is a Parlia-  
 ment.*

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**F I N I S.**

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